IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3913 of 1997

Date of Decision: 09-12-2004

SHARDABEN PRATAPBHAI DATANIA

Versus

ABDULKHAN RAHIMKHAN PATHAN

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting:

For Appellant:

MR MIHIR J THAKORE

For Respondents:

MR ADIL M

MR YN RAVANI

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. This Appeal arises out of the Award passed by Motor Accident Claims Tribunal (Aux.) Kheda, Nadiad, in Motor Accident Claim Petition No.1035 of 1983.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. Accident took place on 07-05-1983 when Jeep (MRB 326) driven by Pratapbhai (deceased) was hit on National Highway-8 near Village Dumral at about 3.30 a.m. by Truck (MTG 3387). The allegation is that the Truck was being driven rashly and negligently. It was driven on the wrong side and hit the jeep, resulting in the death of four young persons. Deceased in this case was serving as driver in Cama Motors Private Limited. He was 26 year old, receiving salary of Rs.750 per month. Compensation of Rs.1,90,000/- is claimed. Driver of the Truck has not filed reply nor appeared as witness. Insurance Company disputed the claim and submitted that there was no negligence on the part of the Truck Driver, the Jeep driver was responsible for the accident, therefore, liability is denied. Claims Tribunal found that Jeep driver also contributed to the extent of 50%, therefore, out of the assessed compensation of Rs.1,75,000/-, Rs.87,500/- have been ordered to be paid with interest 12% from the date of application till realisation within 2 months from the date of award. The compensation has also been dealt with as per last part of the award.

3. Through this Appeal, finding of the Claims Tribunal, as to contributory negligence of Jeep driver, has been assailed, apart from quantum of compensation. Submission is that accident is a result of rash and negligent driving of the Truck by its driver, Jeep driver did not at all contribute to the same, further, assessment of compensation is not just and proper, compensation should have been awarded looking to the earnings of the deceased and potential for earning more in future. Sarvashri Adil Mirza and YN Ravani opposed the submissions. They submit that just compensation has been awarded to the claimants, and finding as to contributory negligence is supported by evidence.

4. Record perused, contentions examined. First question for determination is the responsibility for causing the accident, whether Truck driver is wholly responsible and whether Jeep driver has also contributed to the same, if so, to what extent, and if not, the results thereof. From the perusal of evidence of Shri Pravinbhai P. Patel, it is abundantly clear that Jeep

was being followed by car. This witness could see the accident. The truck was coming at full speed with full lights, and collided with the Jeep, which was pushed back by 15'. He stopped the car and saw the people thrown out of the Jeep. He and other occupants of the car pulled out the persons shouting in the Jeep. The Truck went on the Kachha road on the wrong side. The driver of the Truck ran away. Jeep was on the edge of tar road on left side. It could not avoid the accident, therefore, accident was caused by the Truck, which came to the wrong side of the Road. The matter was reported to the Police, which prosecuted the driver of the Truck. Photographs of site further demonstrate that driver of the Truck had come on the wrong side. Road was 22' wide with 5' kachha road. There is no case for application of principle of "res ipsa locitur". Consequently, the finding of the Claims Tribunal as to contributory negligence of Jeep driver is not sustainable on evidence, therefore, it is held that the Truck driver is solely responsible for the accident.

5. Next question pertains to compensation. The deceased was 26 year old at the time of accident. He was employed with Cama Motors Private Limited earning Rs.750/-. Of course, there is reference to daily allowance, but evidence is not very clear, whether he was actually receiving it or the same is part of total amount of Rs.750/-. However, he had potential to double his income in future. That being so, it can be taken that the deceased would be earning Rs.1,500/- per month and making a deduction of one third towards personal expenditure, his income comes to Rs.12,000 per annum and multiplied by 18, it comes to Rs.2,16,000/-. Added by Rs.7,000/- (solatium), Rs.2,500/- (loss to the estate), Rs.3,000/- (funeral expenses) and Rs.5000/- (loss of expectancy of life), the compensation comes to Rs.2,33,500/-. The claimants have claimed Rs.1,90,000/-, therefore, learned counsel for the opponents submit that claimant is entitled to the amount claimed, and not the amount arrived at by the Court. We do not agree with this contention. Under Section 168 of the Motor Vehicles Act, 1988, Court has to award just compensation, and not what is claimed by the party. The just compensation is Rs.2,33,500/-. The contention of learned counsel for the respondents for reduction of interest is rejected. Consequently, the Appeal is allowed. Claimants are entitled to compensation of Rs.2,33,500/- with interest awarded by the Claims Tribunal. It is distributed as below:

1.Smt.Shardaben Pratapbhai Datania (widow) - 50%
2.Minor Bharat Pratapbhai Datania (son) - 30%

3.Mahesh Ishwarbhai (brother) - 5%
4.Govind Ishwarbhai (brother) - 5%
5.Ramesh Ishwarbhai (brother) - 5%
6.Ushaben Ishwarbhai (sister) - 5%
The amount be paid to the claimants within a month. The award stands modified to the aforesaid extent, leaving the parties to bear their own costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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